

PT 96-32
Tax Type: PROPERTY TAX
Issue: Religious Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

)	
	)	Docket #: 91-16-986
)	
	)	Real Estate Exemptions
	)	for 1991 Tax Year
)	
MOUNT CALVARY	)	P.I.N.S: 25-20-105-001
BAPTIST CHURCH,	)	through
APPLICANT	)	25-20-105-012
	)	and
	)	25-20-105-019
v.	)	25-20-105-020
	)	25-20-105-021
	)	25-20-105-022
STATE OF ILLINOIS,	)	25-20-105-028
DEPARTMENT OF REVENUE	)	25-20-105-045
	)	25-20-105-047
	)	25-17-333-024
	)	25-17-333-025
	)	25-17-333-036
	)	25-17-333-037
)	
)	
	)	Alan I. Marcus,
	)	Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

APPEARANCES:

Ms. Denise Brewer and Mr. James J. Romberg appeared on behalf of Mount Cavalry Baptist Church.

SYNOPSIS:

This matter comes on for hearing pursuant to Mount Calvary Baptist Church's (hereinafter "applicant" or "Mt. Cavalry") protest of the Illinois Department of Revenue's (hereinafter "Department") denial of applicant's application for exemption from real estate taxes pursuant to Ill. Rev. Stat. ch. 120 par. 500 et

seq.¹ These proceedings raise the issues of whether any or all of the above-captioned properties qualify for exemption as properties "used exclusively for religious purposes" and/or "non-profit parking areas" within the meanings of Ill. Rev. Stat. ch. 120 pars. 500.2 and 500.16. Following submission of all evidence and a careful review of the record, it is recommended that some, but not all of the above-captioned parcels, be removed from the tax rolls for the 1991 assessment year.

FINDINGS OF FACT:

1. The Department's jurisdiction over this matter and its position therein are established by the admission into evidence of Dept. Group Ex. No. 1 and Dept. Ex. No. 2.

2. Applicant was reinstated as a not-for-profit corporation under the laws of the State of Illinois on August 3, 1989. Applicant Ex. No. 7. Its missions, as defined in its by-laws, are as follows:

- A. To live each day a day of goodwill as Jesus lived;
- B. To preach, teach and spread the gospel so far as to foster the spiritual growth of its members and win souls to a living faith in Jesus Christ; and,
- C. To administer the teaching of the Scriptures in principle, policy, in doctrinal character and life.

Applicant Ex. No. 8.

3. Applicant was affiliated with the National Baptist Convention during the 1991 tax year. Tr. p. 60.

4. The subject properties, all of which were owned by applicant during the 1991 tax year, consist of a church building, an academy building, a storage

¹. In People ex rel Bracher v. Salvation Army, 305 Ill. 545 (1922), the Illinois Supreme Court held that the issue of property tax exemption will depend on the statutory provisions in force at the time for which the exemption is claimed. This applicant seeks exemption from 1991 real estate taxes. Therefore, the applicable statutory provisions are those contained in the Revenue Act of 1939 Ill. Rev. Stat. ch. 120 par. 482 et seq.

building and various parking lots. Dept. Ex. A; Applicant Group Ex. No. 4; Tr. pp. 84, 107.

5. Applicant did not derive any rental income from these properties or rent them to third parties during the 1991 assessment year. Tr. pp. 111-112.

6. The church building itself (hereinafter "church") is an 8,692 square foot building identified by Permanent Index Numbers 25-20-105-001, 25-20-105-002 and 25-20-105-003. Its common addresses are 1251 W. 111th Street, 1253 W. 111th Street and 1257 W. 111th Street. *Id.*; Applicant Ex. No. 1.

7. Permanent Index Number 25-20-105-047 is a parking lot that is located directly south of the church. Its common address is 1256 West 111th Street. *Id.*

8. The academy building itself (hereinafter "academy") is directly east of the church and identified by Permanent Index Numbers 25-20-105-004 through and including 25-20-105-009. Its common addresses are 1237 W. 111th Street, 1239 W. 111th Street, 1241 W. 111th Street, 1243 West 111th Street, 1245 W. 111th Street and 1249 West 111th Street. *Id.*

A. The academy is a three-floor structure. Applicant's main sanctuary is located on the first floor, as are two public restrooms. Tr. pp. 25-27.

B. The first floor also contains four rooms. The first is used as a dressing facility for applicant's choir, while the others are used for food giveaway, first aid, and meals. Tr. pp. 25-27.

C. The second floor contains rooms used for Sunday school, children's church, kindergarten, nursery, finance room, church office, pastor's study and four bathrooms. Two of the bathrooms are open to the public, one is for the pastor and the other is used by those working in the church office. Tr. pp. 27-28.

D. The third floor contains rooms used for adult Sunday school, pastor's office, meetings and the church library.

Tr. pp. 28-29.

9. Permanent Index Numbers 25-20-105-010, 25-20-105-011, 25-20-105-012 and 25-20-105-045 are parking lots (hereinafter "main parking lots") located directly east of the academy. Their common addresses are 1225 W. 111th Street, 1229 W. 111th Street, 1231 W. 111th Street and 1235 W. 111th Street. *Id.*

10. The academy and main parking lots occupy a combined total of 31,170 square feet. *Id.*

11. Permanent Index Numbers 25-20-105-019, 25-20-105-020, 25-20-105-021, 25-20-105-022 and 25-20-105-023 are additional parking lots. These lots, whose common addresses are 1201 W. 111th Street, 1205 West 111th Street, 1207 West 111th Street, 1209 West 111th Street and 1211 West 111th Street, are located at least five parcels east of, but still on the same block as, the academy and main parking lots. *Id.*

12. Permanent Index Number 25-17-333-036 is a 7,250 square foot storage building (hereinafter "storage building") located at 1322 West 111th Street. *Id.*; Applicant Ex. No. 5.

A. The storage building "needed repair" during the 1991 tax year. For this reason and because of insurance concerns, as well as fines and violations associated with the building, applicant did not "let anyone go into[,]" the storage building or conduct any church activities thereon during the 1991 assessment year. Tr. pp. 118-119.

B. Applicant did use this facility to store materials related to church and school purposes throughout the 1991 tax year. It allowed certain unidentified persons to go into this facility on an intermittent basis. However,

these persons could only "get things in and out of" the storage building. Tr. pp. 119, 128.

C. Applicant did not rent the storage building during the 1991 tax year. Tr. p. 128.

13. Permanent Index Number 25-17-333-037 is a parking lot located directly east of the storage building. Its common address is 1318 West 111th Street. *Id.*

14. Permanent Index Numbers 25-17-333-024 and 25-17-333-025 are parking lots located at least ten parcels west of, but on the same block as, the storage building. The common addresses of these particular parking lots are 1352 and 1356 West 111th Street. *Id.*

15. The church was destroyed by fire in 1989. Due to the extensive damage, which included complete destruction of the roof, applicant did not use the church building during the entire 1991 tax year. Tr. pp. 12, 21-23, 34, 89, 132.

16. Because it could not use the church, applicant conducted the following activities at the academy during the 1991 tax year: religious services which began at 11:00 a.m. on Sundays (Tr. pp. 23, 34); Family Need, a program in which applicant gave away food to the needy on Fridays at 11:00 a.m. (Tr. pp. 26, 38); Sunday school which began at 9:30 a.m. and ran approximately until 11:00 a.m. (Tr. p. 34); unspecified Sunday afternoon programs (Tr. pp. 34-35); Three Score Club, a Bible study group for "elderly ladies" that met at 11:30 a.m. on Mondays (Tr. p. 36); sanctuary choir rehearsal at 7:00 p.m. on Tuesdays (*id.*); prayer meetings at 7:00 p.m. on Wednesdays (Tr. p. 37); Bible study at 8:00 p.m. on Wednesdays (*id.*); senior citizens dinners at 10:00 a.m. on Thursdays (*id.*); vocal group rehearsals on Thursdays at 6:00 p.m. (Tr. pp. 37-38); teachers' meetings on Thursdays at 7:00 p.m. (Tr. p. 38); children's choir rehearsal on Fridays at 6:00 p.m. (*id.*); rehearsal for the Cavalry Wonders, a small vocal group of five or six people who also sang in the Sanctuary choir, on

Saturdays between approximately 8:00 a.m. and 10:30 a.m. (Tr. pp. 38-39); funeral services, which were held when need arose on all days of the week except Sundays (Tr. p. 40); weddings (*id.*); various church meetings² (*id.*); church anniversary in September (Tr. p. 41); night services at unspecified times during the week (Tr. p. 42); periodic revivals (*id.*); and pastoral counseling, which was available at no charge to couples getting married or others in need. (Tr. pp. 122-123).

17. The Sunday school was open to the public but was not free of charge. Average attendance was between 150 and 200 people. Tr. pp. 44-46.

18. The charge consisted of an offering. Although the exact amount of each offering was unspecified, the proceeds were combined and placed into a separate fund for accounting purposes. Tr. p. 114. During the 1991 tax year, applicant's total income from the Sunday school offering was \$5,605.03. Applicant Ex. No. 3.

19. Applicant offered between 10 and 12 classes on any given Sunday. The classes provided instruction and lessons in the Old and New Testaments of the King James Bible. Adults were free to attend the class or classes of their choosing. However, children below the ages of 12 or 13 were "divided" into specific classrooms. Tr. p.45

20. The Sunday service was open to the public and began with devotion. It continued with prayers, singing from the one or two of the choirs, a message from the preacher and announcements about church activities. The service would then conclude with an invitation to join the congregation. Tr. pp. 47-48.

21. Average attendance at the service, which included a special children's church that was open to the public, was about 400 people. Tr. p. 48.

². The meetings schedule was as follows: Church trustees met every fourth Thursday at night; deacons met on the first Saturday night of each month; and quarterly church meetings, open to the entire congregation, on Wednesday or Thursday nights. Tr. p. 40.

22. Applicant took up a collection at its Sunday services. It raised approximately \$4,000.00 per week through this collection and used the proceeds to pay church expenses, such as the mortgage and minister's salary. Tr. pp. 48-50.

23. The Wednesday evening Bible study was open to the public without charge. Tr. p. 51. It focused on readings from the Old and New Testaments. Average attendance was between 50 and 75 people. Tr. pp. 51-52.

24. Applicant obtained food for its family need program from the Chicago Food Depository (hereinafter "CFD"). CFD would charge applicant approximately \$200.00 per month for the food it provided. Applicant covered these costs out of the Sunday offerings. It distributed the food free of charge to anyone in need, even if they were not a member of applicant's church. Tr. pp. 52-53.

25. Applicant's revival, which was generally held once per year, was open to the public. Average attendance was between 150 and 200 people. Tr. pp. 54-56.

26. Applicant did not charge admission to its revival. However, it did take up a collection. It collected approximately \$1,000.00 to 1,100.00 per revival. It used these funds to pay the guest speaker, who was often a minister from another church. *Id.*

27. The speaker would receive approximately \$200.00 per night. Applicant would then place any remaining proceeds from the revival into the church funds. *Id.*

28. Applicant used the main and other adjacent parking lots "most of the time" when conducting its various activities. Tr. p. 43.

29. Applicant also held field trips at various times during the 1991 tax year. It used the main parking lots to congregate for these trips. Tr. p. 41.

30. Mount Cavalry Christian Academy (hereinafter "MCCA") operated a school at the academy building during the 1991 tax year. Tr. p. 130.

31. MCCA was incorporated under the General Not For Profit Corporation Act of Illinois, on December 2, 1985. Applicant Ex. No. 6. Although it was separately incorporated, MCCA did not have any ownership interest in the subject properties. Applicant Group Ex. No. 4.³

32. MCCA was open to the general public. It was in session from October of 1990 until June of 1991. Less than 120 students attended MCCA during that time. Tr. pp. 130-131.

33. MCCA charged tuition, which varied as the student was able to pay. MCCA applied the proceeds from tuition toward teacher salaries. However, because the proceeds did not cover all the salaries, applicant provided a supplement to MCCA. *Id.*

34. MCCA ordered books for use in its classes. All proceeds from these sales were paid to the book sellers. Tr. p. 131.

35. Membership in applicant's church was open to the general public without membership dues or an initiation fee. Tr. p. 58. The only requirement for membership was that "you just have to believe in the Lord." *Id.*

36. Applicant had approximately 1,000 members at the beginning of the 1991 assessment year. However, due to an "internal conflict," Reverend Donald Parson left his position as applicant's pastor in November, 1991. After Reverend Parson left, applicant's membership decreased to approximately 500. Tr. pp. 23-24, 81, 123-124.

37. Applicant filed for protection, under Chapter 11 of the United States Bankruptcy Code, in September of 1989. App. Ex. No. 10; Tr. p. 108. The bankruptcy was resolved in December of 1990. Tr. p. 119. However, as a result of the bankruptcy, applicant entered into a plan which required that it make federal tax payments of \$700.00 per month.⁴ The plan also required applicant

³. As noted in Finding of Fact 4, *supra* p. 3, applicant owned all the subject properties. Insofar as Finding of Fact 5, *supra* p. 3 further establishes that applicant did not rent any of the subject properties to third parties, I find that MCCA merely used the academy building while school was in session.

⁴. The primary witness on applicant's finances, Dr. Robert Johnson, was chairman of applicant's board of trustees during the 1991 tax year. Tr. p. 79.

pay \$973.00 per month to the Illinois Department of Revenue. Applicant Ex. No. 2; Tr. p. 119.

38. Applicant's total income for the 1991 assessment year was \$443,509.53. Applicant's exhibit No. 3. Said income was attributable to the following sources:⁵

- A. \$70,519.65, or approximately 16% of total income, from weekly offerings.
- B. \$185,458.17, or approximately 42% of total income, from tithes.
- C. \$11,841.15, or approximately 3% of total income, from benevolent offerings.
- D. \$2,989.00, or less than 1% of total income, from evening offerings.
- E. \$10,038.84, or approximately 2.2% of total income, from after offerings.
- F. \$2,186.65, or less than 1% of total income, from the junior church offerings.
- G. \$5,605.03, or approximately 1% of total income, from the Sunday school offerings.⁶

In that capacity, he was intimately familiar with applicant's finances. Tr. p. 80. His testimony, at Tr. p. 116, indicated that applicant made monthly payments of \$700 to "the FDIC." However, Dr. Johnson was referring to applicant's balance sheet (Applicant Ex. No. 2), which indicated FICA liabilities of \$1,533.83 and Federal Tax Withholding Tax liabilities of \$466,055.30. Based on the liabilities shown on the balance sheet, I find that Dr. Johnson misspoke and applicant in fact paid \$700.00 per month to the appropriate federal taxing authorities.

⁵. The percentages were derived by dividing income attributable to the specific source in question, shown on Applicant Ex. No. 3, by the total income shown thereon.

⁶. See Finding of Fact 16, *infra* p. 6, for explanation as to the source and use of these funds.

H. \$4,625.14, or approximately 1% of total revenues, from scholarship donations.

I. \$10,437.67, or approximately 2.3% of total income, from morning offerings.

J. \$448.07, or less than 1% of total income, from interest.

H. \$100,081.68, or approximately 22.56% of total income, from the Victory Fund.

I. \$7,750.75, or approximately 1.74% of total income, from special officer contributions.

J. \$23,326.73, or approximately 5.25% of total income, from a special offering.

K. \$8,161.00, or approximately 1.84% of total income, from the building fund.

Applicant Ex. No. 3.

39. The Victory Fund was established to pay the mortgage of the church, which was \$14,000.00 per month. The Fund consisted of contributions that were "over and above" members' regular tithes. Tr. p. 112.

40. Tithes are contributions that the members placed in a special envelope for purposes of identification. Tr. p. 113.

41. Weekly offerings are "gifts" collected, without regard for membership status, from those who attended services. Tr. pp. 112-113.

42. The benevolent offering is "a special offering for the poor" that applicant raised to give at funerals and other occasions. Tr. p. 113.

43. The evening offering was taken up at special programs which applicant conducted at night. It differed from the weekly offering in that the latter was taken up at services which began at 7:30 a.m. or 11:00 a.m. *Id.*

44. The after offering was taken up to pay guest ministers if they came and preached to the congregation. *Id.*

45. The junior church offering was taken up at children's services. Tr. 114.

46. The scholarship fund was "another special offering" that raised money for young adults who attended college. Tr. pp. 114, 119. Applicant awarded between 20 and 25 scholarships, primarily to church members, during the 1991 tax year. Tr. p. 119. Each scholarship was between \$50.00 and \$100.00. *Id.*

47. The morning offering was collected at the 7:30 a.m. service. *Id.*

48. The special officers contribution was collected primarily from deacons and other officers for purposes of reducing applicant's debts. Tr. p. 115.

49. The special offering was collected from applicant's membership at large for purposes of reducing applicant's debts. *Id.*

50. The building fund was collected in order to raise money for rebuilding the church after it was destroyed by fire. Tr. p. 115.

51. Applicant incurred a total of \$356,519.31 in operating expenses during the 1991 tax year. Applicant Ex. No. 3. Said expenses were apportioned as follows:⁷

A. \$43,435.25, or approximately 12% of total operating expenses, on the pastor's salary.

B. \$22,880.00, or approximately 6.4% of total operating expenses, on other salaries.

C. \$32,480.00, or approximately 9.1% of total operating expenses, on unspecified contractual services.

D. \$2,192.68, or less than 1% of total operating expenses, on payroll taxes.

E. \$3,674.00, or approximately 1.03% of total operating expenses, on senior citizens and benevolent activities.

⁷. The percentages were derived by dividing the specific expense in question, shown on Applicant Ex. No. 3, by the total expenses shown thereon.

- F. \$4,835.00 or approximately 1.3% of total operating expenses, on parsonage costs.
- G. \$750.00, or less than 1% of total operating expenses, on parking rental.
- H. \$28,130.09, or approximately 7.89% of total expenses, on utilities and telephone.
- I. \$6,466.62, or approximately 1.8% of total expenses, on speaker fees.
- J. \$15.00, or less than 1% of total operating expenses, on an unspecified florist.
- K. \$14,179.83, or approximately 3.97% of total operating expenses, on repairs and maintenance.
- L. \$590.30, or less than 1% of total operating expenses, on scavenger services.
- M. \$812.63, or less than 1% of total operating expense, on maintenance supplies.
- N. \$16,945.00, or approximately 4.75% of total operating expenses, on security.
- O. \$824.19, or less than 1% of total expenses, on office supplies and postal costs.
- P. \$58.42, or less than 1% of total expenses, on printing and duplicating costs.
- Q. 1,024.65, or less than 1% of total operating expenses, on dues and subscriptions.
- R. \$14,882.36, or 4.17% of total operating expenses, on legal and professional fees.
- S. \$11,208.50, or approximately 3.14% of total operating expenses, on general insurance.

T. \$334.00, or less than 1% of total operating expenses, on unspecified revival expenses.

U. \$1,071.03, or less than 1% of total operating expenses, on bank charges.

V. \$607.35, or less than 1% of total operating expenses, on contributions and donations.

W. \$37.00, or less than 1% of total operating expenses, on local travel.

X. \$4,352.46, or approximately 1.2% of total expenses, on unspecified miscellaneous expenses.

Y. \$142,000.00, or approximately 40% of total operating expenses, on interest expenses.

Z. \$2,732.95, or less than 1% of total operating expenses, on equipment rental.

Applicant's Ex. No. 3.

52. The interest expense included interest on applicant's mortgage as well as interest payable to the IRS. Tr. p. 117.

53. Applicant also incurred the following long term liabilities during the 1991 tax year:

A. \$72,952.00 unspecified accounts payable.

B. \$1,533.83 in FICA taxes withheld.

C. \$466,055.30 in "federal taxes withheld."

D. \$56,395.13 in "state taxes withheld."

E. \$1,285,182.83 in long term notes payable.

Applicant Ex. No. 2.

54. The long term notes payable consisted of liability for applicant's mortgage. Tr. p. 117.

CONCLUSIONS OF LAW:

On examination of the record established this applicant has partially demonstrated, by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant exemption of some but not all of the subject properties from real estate taxes for the 1991 assessment year. Accordingly, under the reasoning given below, the determination by the Department that all of the above-captioned parcels do not qualify for such exemption under Ill. Rev. Stat. ch. 120 pars. 500.2 and 500.16. should be modified. In support thereof, I make the following conclusions:

A. Constitutional and Statutory Considerations

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The power of the General Assembly granted by the Illinois Constitution operates as a limit on the power of the General Assembly to exempt property from taxation. The General Assembly may not broaden or enlarge the tax exemptions permitted by the Constitution or grant exemptions other than those authorized by the Constitution. Board of Certified Safety Professionals, Inc. v. Johnson, 112 Ill.2d 542 (1986). Furthermore, Article IX, Section 6 is not a self-executing provision. Rather, it merely grants authority to the General Assembly to confer tax exemptions within the limitations imposed by the Constitution. Locust Grove Cemetery Association of Philo, Illinois v. Rose, 16 Ill.2d 132 (1959). Moreover, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions or limitations on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill.App.3d 497 (1st Dist. 1983).

In furtherance of its Constitutional mandate, the General Assembly enacted the Revenue Act of 1939, Ill. Rev. Stat. ch. 120 par. 428 et seq. The

provisions of that statute which govern disposition of the present matter are contained in paragraphs 500.2 and 500.16. The former provides, in relevant part, for exemption of the following properties:

All property used exclusively for religious purposes, or used exclusively for school and religious purposes, or for orphanages and not leased or otherwise used with a view to profit, including all such property owned by churches or religious institutions or denominations and used in conjunction therewith as parsonages or other housing facilities provided for ministers (including bishops, district superintendents and similar church officials whose ministerial duties are not limited to a single congregation), their spouses, children and domestic workers, performing the duties of their vocation as ministers at such churches or religious institutions or for such denominations, and including the convents and monasteries where persons engaged in religious activities reside. (Emphasis added).

Paragraph 500.16 provides for exemption of:

Parking areas, not leased or used for profit, when used as part of a use for which an exemption is provided hereinbefore and owned by any school district, non-profit hospital or school, or religious or charitable institution which meets the qualifications for exemption.

B. The Burden of Proof and Related Considerations

It is well established in Illinois that a statute exempting property or an entity from taxation must be strictly construed against exemption, with all facts construed and debatable questions resolved in favor of taxation. People Ex Rel. Nordland v. Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App. 3d 430 (1st Dist. 1987). Based on these rules of construction, Illinois courts have placed the burden of proof on the party seeking exemption, and, have required such party to prove, by clear and convincing evidence, that it falls within the appropriate statutory exemption. Immanuel Evangelical Lutheran Church of Springfield v. Department of Revenue, 267 Ill. App.3d 678 (4th Dist. 1994).

Prior to 1909, it was a requirement for the exemption of property used for religious purposes that it be owned by the organization that claimed the exemption. Since that time however, a statutory amendment (which the emphasized

language demonstrates is still in effect) eliminated that requirement. The test of exemption became use and not ownership. People ex rel Bracher v. Salvation Army, 305 Ill. 545 (1922). See also, American National Bank and Trust Company v. Department of Revenue, 242 Ill.App.3d 716 (2nd Dist. 1993). However, both the plain language of paragraph 500.2 and Illinois case law prohibit exemption where property used exclusively for religious purposes is "leased or otherwise used with a view to profit ...[.]" Victory Christian Church v. Department of Revenue, 264 Ill. App.3d 919 (1st Dist. 1988) (hereinafter "Victory Christian").

In People ex rel. McCullough v. Deutsche Evangelisch Lutherisch Jehova Gemeinde Ungeanderter Augsburgischer Confession, 249 Ill. 132 (1911) (hereinafter "McCullough") the Illinois Supreme Court considered whether appellee's real estate qualified for religious and educational exemptions from property taxes under amendments to the Revenue Act that became effective July 1, 1909. While the court's analysis of the educational exemption has limited relevance to this proceeding, its definition of the term "religious purpose" provides the basic framework for analyzing taxpayer's claim under paragraph 500.2.

The court began its analysis by noting that "[w]hile religion, in its broadest sense, includes all forms and phases of belief in the existence of superior beings capable of exercising power over the human race, yet in the common understanding and in its application to the people of this State it means the formal recognition of God as members of societies and associations." McCullough, *supra* at 136.

Cases decided after McCullough have acknowledged that religious beliefs are not necessarily limited to those which profess an orthodox belief in God. See, United States v. Seeger, 380 U.S. 163 (1965). However, the following definition of "religious purpose" contained in McCullough, emphasizes a more traditional approach:

As applied to the uses of property, a religious purpose means a use of such property by a religious society or persons as a stated place for public worship, Sunday schools and religious instruction. McCullough at 136-137.

C. Exemption of the Church Building and its Adjacent Parking Lot

In Antioch Missionary Baptist Church v. Rosewell, 119 Ill. App.3d 981 (1st Dist. 1983), the court confronted the issue of whether a property owned by appellant's church could qualify for exemption even though it was boarded up and vacant during the years in question. In holding in the negative, the court relied on Skil Corporation v. Korzen, 32 Ill.2d 249 (1965) for the proposition that "evidence that land was acquired for an exempt purpose does not eliminate the need for proof of actual use for that purpose" and therefore, "[i]ntention to use is not the equivalent of actual use." See also, Illinois Institute of Technology v. Skinner, 49 Ill.2d 59 (1971); Comprehensive Training and Development Corporation v. County of Jackson, 261 Ill. App.3d 37 (5th Dist. 1994).

The instant case is factually similar to Antioch Missionary Baptist Church in that applicant did not actually use its church building throughout the entire 1991 tax year. Rather, the church's burned out condition prohibited applicant from using it for religious purposes during that time. Thus, although applicant clearly intended to use the church for religious purposes, such intent, standing alone, does not establish that the church was in fact in exempt use under current Illinois law.

With respect to the adjacent parking lot, I would note that the plain language of paragraph 500.16 requires that such lot must be "used as part of a use for which exemption is provided hereinbefore ...[.]" Inasmuch as the preceding analysis establishes that the church itself is not in exempt use, I conclude that the parking lot is similarly non-exempt. Therefore, I recommend that both the church building (Permanent Index Nos. 25-20-105-001 through 003) and the parking lot directly south thereof (Permanent Index No. 25-20-105-047) remain on the tax rolls for the 1991 assessment year.

D. Exemption of the Academy and its Adjacent Parking Lots

Based on Findings of Fact 15 through 35 (*supra* pp. 5-8), I conclude that the academy building itself was actually used "exclusively for school and religious purposes" within the meaning of Section 500.2 during the 1991 assessment year. Illinois courts have consistently interpreted the term "exclusive use" to mean the primary purpose for which property is used and not any secondary or incidental purpose," Gas Research Institute v. Department of Revenue, 145 Ill. App.3d 430 (1st Dist. 1987); Yale Club of Chicago v. Department of Revenue, 214 Ill. App.3d 468 (1st Dist. 1991).

Findings of Fact 15 through 27 clearly establish that applicant used the academy for various services, bible studies, prayer meetings and other activities, including a Sunday school which taught lessons in the Old and New Testaments of the King James Bible, throughout the 1991 assessment year. Inasmuch as applicant conducted these activities on various days throughout the week on a year-round basis, and only operated MCCA for six months out of the entire 1991 assessment year, I find that the latter use was incidental during the 1991 tax year.

This finding is significant because applicant submitted little, if any evidence as to the curriculum that was taught at MCCA. Absent such evidence, applicant would have failed to prove that the academy was in fact used for educational purposes. Cf. Methodist Old Peoples Home v. Korzen, 39 Ill.2d 149 (1968). (Statements that an organization is organized for exempt purposes do not, in and of themselves do not, in and of themselves, relieve such organization of its burden of proving that it in fact engages in exempt activity). However, because I find that the academy was primarily used for services and other activities that qualify as "religious" within the meaning of McCullough, *supra*, the aforementioned failure of proof does not affect the academy's exempt status.

One could argue that the academy should not be exempt because applicant's income exceeded its expenses during the 1991 assessment year. Section 500.2 specifically denies exemption to properties "used exclusively for school and religious purposes" that are "leased or otherwise used with a view to profit." Although applicant's excess income could be considered "profit," the record establishes that neither the academy nor any of the other subject properties were leased during the 1991 assessment year. In this respect, the instant case is factually distinguishable from Victory Christian, *supra*, wherein the court denied exemption of a property leased from a private individual to applicant's church, which used the demised premises exclusively for religious and educational purposes. More importantly, the extensive tax liabilities that resulted from applicant's bankruptcy, coupled with its long term debt structure, make it highly unlikely that the excess income inured to the pecuniary benefit of anyone associated with applicant's operations. Therefore, I conclude such excess does not constitute a prohibited "profit" within the meaning of Section 500.2.

The preceding analysis establishes that the academy was in exempt use during the 1991 exemption year. Thus, based on the plain language of Paragraph 500.16, I conclude that the main parking lots and the lots east thereof should also be exempt. Therefore, it is my recommendation that the academy (Permanent Index Numbers 25-20-105-004 through and including 25-20-105-009), main parking lots (Permanent Index Numbers 25-20-105-010 through and including 25-20-105-012 and 25-20-105-045) and the parking lots east thereof (Permanent Index Numbers 25-20-105-019 through and including 25-20-105-023) be removed from the tax rolls for the 1991 assessment year.

E. Exemption of the Storage Building and its Adjacent Parking Lots

The instant record establishes that the storage building was in a dilapidated condition that rendered it unsuitable for regular use during the 1991 tax year. Inasmuch as such condition mirrors that of the property at issue

in Antioch Missionary Baptist Church, *supra*, I conclude that the storage facility was not in exempt use during the 1991 tax year.

I would also note that applicant's evidence pertaining to use of the storage building is, at best, inconsistent. This is because such evidence at first indicated that applicant "did not let anyone go into" the storage building due to insurance and other safety-related concerns. However, other evidence indicated that applicant allowed certain unidentified persons to go into the storage building on an intermittent basis in order to "get things in and out".

If I find the former evidence to be credible, I could infer that applicant did not in fact use the storage building at all during the 1991 tax year because no one was allowed to enter the premises. However, if I accept the latter as credible, the aforementioned rules governing applicant's burden of proof would mandate an inference of extremely limited and intermittent usage. Because either inference would support taxation, I conclude that applicant has failed to prove by clear and convincing evidence that the storage building was in exempt use during the 1991 assessment year. Therefore, the storage building can be exempted only if applicant proves that it satisfies the criteria set forth the line of cases dating to MacMurray College v. Wright, 38 Ill. 2d 272 (1967).⁸

In MacMurray College, applicants (two colleges) sought exemption of certain faculty and staff housing facilities that were adjacent to their tax-exempt main campuses. The court held that although "[e]xemption will be sustained where if it is established that the property is used primarily for purposes which are reasonably necessary for the accomplishment and fulfillment of the [exempt] educational objectives, or efficient administration of, the particular institution [sic]," applicants had failed to sustain their respective burdens of

⁸. See also, McKenzie v. Johnson, 98 Ill.2d 87 (1983); Evangelical Hospital Association v. Novak, 125 Ill. App.3d 439 (2d Dist. 1984); Northwestern Memorial Foundation v. Johnson, 141 Ill. App.3d 309 (1st Dist. 1986); Knox College v. Department of Revenue, 169 Ill. App.3d 832 (3rd Dist. 1988); Norwegian American Hospital v. Department of Revenue, 210 Ill. App.3d 318 (1st Dist. 1991); Memorial Child Care v. Department of Revenue, 238 Ill. App.3d 985 (4th Dist. 1992).

proof. *Id.* at 278. Specifically, the court found the record lacking in evidence which established that the faculty or staff were required, "because of their educational duties, to live in these residences or that they were required to or did perform any of their professional duties there." *Id.* at 279. The court also noted that "there was no specific proof presented, aside from one isolated example, "to show that student, academic, faculty administrative or any other type of college-connected activities were ever actually conducted at [the facilities] by any member of the faculty or staff of either of the colleges." *Id.*

Like the appellants in MacMurray College, this applicant presented little if any evidence which would establish that religious activities took place at the storage building. This case is also similar to MacMurray College in that the record lacks evidence which proves that applicant's pastor or any other employees were required to use the storage building in order to carry out their assigned job responsibilities. Furthermore, the aforementioned inconsistencies in applicant's evidence establish, at best, "isolated example[s]" of the building's use. Therefore, I conclude that such evidence is legally insufficient to sustain applicant's burden of proof.

In Norwegian American Hospital v. Department of Revenue, 210 Ill. App.3d 318 (1st Dist. 1991), (hereinafter "NAH"), the court upheld exemption of 25 parcels which appellant developed as part of a plan to combat "dangerous and dilapidated environment surrounding the hospital." *Id.* at 323. The court found that such conditions, which included a riot, gang activity and empty tenement buildings, necessitated a plan to ensure appellant's continued survival and efficient administration.

After extensive study, appellant in fact devised such a plan. Its stated objectives were preventing crime to patients, staff and visitors and increasing parking and providing a clear line of sight to major thoroughfares. The court noted that these objectives were consistent with appellant's overall plan to

alleviate the aforementioned safety concerns. Accordingly, it concluded that such concerns provided "a sufficient nexus to the hospital's survival and efficient administration to qualify the hospital's response, [which included development of all 25 parcels] as reasonably necessary according to the spirit and letter of the statute." [sic] *Id.* at 324.

The "reasonably necessary" analysis was most recently employed in Memorial Child Care v. Department of Revenue, 238 Ill. App.3d 985 (4th Dist. 1992) (hereinafter "MCC"). There, appellant sought exemption of a child care center which it operated for the benefit of its affiliate, Memorial Medical Center. Applicant built the center after a task force found that instability in applicant's work force was partially attributable to a shortage of child care facilities in the Springfield area.

The court noted that the center "was specifically organized" and in fact did "provide a flexible child care program for the employees of Memorial Medical Center." *Id.* at 985. Because this program helped "alleviate the difficulty Memorial Medical Center experienced in hiring and maintaining employment of professional employees with young children[,] the court concluded it was reasonably necessary to the Medical Center's operations. *Id.* at 993.

Unlike the appellants in NAH and MCC, this applicant has not shown *how* the storage facility furthers its exempt purpose. More importantly, the record is devoid of any evidence which would establish that applicant built and/or maintained the storage building in response to a "dangerous and dilapidated" environment or other conditions that jeopardized its continued survival and efficient administration. Furthermore, unlike the appellant in MCC, this applicant did not introduce any evidence which would establish that the storage building satisfied a specific need which, if left unfulfilled, would cause instability in applicant's workforce or congregational membership. Absent such evidence, applicant has failed to establish a "nexus" between the storage building and its exempt operations. Due to this failure of proof, I conclude

that the storage facility was not reasonably necessary to further such operations during the 1991 tax year.

The preceding analysis establishes that the storage facility is not exempt. Thus, the plain meaning of paragraph 500.16 mandates that the adjacent parking lots are likewise non-exempt. For this reason, as well as those set forth above, it is my recommendation that the storage building (Permanent Index Number 25-17-333-036) and the adjacent parking lots (Permanent Index Numbers 25-17-333-037, 25-17-333-024 and 25-17-333-025) remain on the tax rolls for the 1991 assessment year.

Based on the foregoing, I conclude that the academy and its adjacent parking lots qualify for exemption from real estate taxes with respect to the 1991 assessment year. Therefore, only these parcels, (Permanent Index Numbers 25-20-105-004 through and including 25-20-105-009; 25-20-105-010 through and including 25-20-105-012 and 25-20-105-045) should be removed from the tax rolls for that year. All of the other aforementioned parcels, including the church and parking lot directly south thereof (Permanent Index Numbers 25-20-105-001 through and including 25-20-105-003; 25-20-105-047) as well as the storage building and its adjacent parking lots (Permanent Index Numbers 25-17-333-036 and 037; 25-17-333-024 and 025) should remain on the tax rolls for 1991.

WHEREFORE, for the reasons set forth above, it is my recommendation that the Department's denial of exemption be modified as to the academy and its adjacent parking lots but affirmed in all other respects.

Date

Alan I. Marcus
Administrative Law Judge